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International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families
Twenty-second session

Summary record of the 276th meeting
Held at the Palais des Nations, Geneva, on Wednesday, 15 April 2015, at 10 a.m.

Chairperson: Mr. Carrión Mena

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 73 of the Convention (*continued*)

Initial report of Peru (continued) (CMW/C/PER/1; CMW/C/PER/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Peru took places at the Committee table.*

2. **The Chairperson** invited the delegation of Peru to reply to questions asked at the previous meeting.

3. **Mr. Chávez Basagoitia** (Peru) said that his country's rapid economic and social development had contributed to heightening its attractiveness for migrant workers. The current Aliens Act therefore required revision, and a bill to that effect, incorporating a human-rights-based approach, had been drafted by a working group made up of representatives of stakeholders including the public and private sectors, civil society and human rights organizations. The bill represented a major step forward, providing for new immigration categories — for example, highly skilled workers and those migrating for humanitarian reasons — and including provisions to facilitate migration flows, streamline procedures and prevent the criminalization of irregular migration.

4. Civil society organizations were very active in all areas of Peruvian politics and society and customarily participated in the drafting of treaty body reports and legislation. The Government had a good working relationship with such organizations; however, owing to time constraints, the initial report of Peru to the Committee had, regrettably, been drafted without their input.

5. A range of initiatives had been implemented to combat trafficking in persons and support victims. The total budget allocation for combating trafficking in migrant workers currently stood at around US$ 3 million. Certain programmes or units fell under government ministries and thus had an overall departmental budget, while other entities had specific funding and targets relating to that issue. Various initiatives fell under the remit of, among others, the Ministry of Foreign Affairs, the Ministry of Labour and the Ministry of the Interior. They included, for example, measures to support and assist victims of trafficking and provide repatriation and consular assistance; to prevent the sexual exploitation of children and adolescents and support the victims thereof; and to promote employment opportunities for migrant workers.

6. The National Plan of Action against Trafficking in Persons for the period 2011–2016 came under the remit of the Ministry of Women and Vulnerable Groups, which also had the largest budget allocation and the main responsibility for tackling the issue, particularly in terms of providing assistance to victims. It had recently issued a protocol on trafficking and had implemented a broad range of mechanisms to assist victims of sexual and domestic violence, ensure access to justice and provide free emergency care services. Under a family welfare initiative established in 2014, shelters, including one for adolescents, had been set up for victims of trafficking. Various projects had been established in Maynas province to help child and adolescent victims and provide accommodation for women victims, and the local authorities in Madre de Dios, the region with the highest rate of Haitian migrant workers, had, in November 2014, launched a project to provide financial assistance.

7. The Ministry of Justice and Human Rights was responsible for providing legal assistance, including for victims of trafficking. In 2014, Peru had had 137 public defenders with expertise in that area, and there were plans to increase that figure to 177. The Public

Defence Service had dealt with 12 such cases during that year, and 15 cases had been opened between January and March 2015.

8. Up-to-date and accurate data regarding the numbers of migrant workers transiting to or from Peru were difficult to obtain, and only estimates could be provided. The majority of migrant workers registered in Peru originated from other countries in the Americas and included professionals and office workers. Between 2 million and 3 million Peruvians had emigrated abroad, with the main destinations being the United States of America, Argentina and Chile.

9. Under the Constitution, migrant workers and Peruvian nationals were treated equally in the eyes of the law, a principle that was applied consistently throughout the national legislative framework. Migrant workers were therefore accorded the same rights as Peruvian workers to join social security schemes and trade unions, and to hold office in the latter, and they could, in certain circumstances, work in the public sector. Bilateral agreements on social security were in place with various countries to ensure that Peruvian nationals could retire with pensions.

10. The Act on Employment of Foreign Labour exempted some categories of migrant workers from employment quotas. For example, there were no quotas for migrant workers who were married to Peruvians or were citizens of other members of the Common Market of the South (MERCOSUR) or of other countries with which Peru had bilateral agreements. Certain employment categories were also exempted, such as foreign nationals investing in the country or working for airlines or multinational companies.

11. Enforcement of labour standards throughout the country, including for migrant workers, came under the remit of the Labour Inspectorate, which had the authority to inspect business premises and activities and impose fines for breaches of regulations. Under that framework, migrant workers could seek recompense from the authorities in the place where their rights had been violated.

12. **Mr. Sivina Hurtado** (Peru) said that migrant workers were crucial to economic development in Peru and throughout the Latin American region. To complement the new legislation being drafted, existing legislation needed to be harmonized with that of neighbouring countries. Although migrant workers were accorded the same rights as Peruvian nationals, certain restrictions applied to workers in an irregular situation. Accordingly, the aim had always been to regularize the situation of such workers, which could be done under the Aliens Act as it currently stood. However, it was important to recognize that not all workers wished to have their situation regularized and that some did not meet the requirements.

13. When migrant workers or members of their families considered that their rights had been violated, they could seek legal redress and compensation under article 139 of the Constitution. The Public Prosecution Service was responsible for investigating such offences and had the power to open criminal prosecutions and, in certain cases, order the pretrial detention of the perpetrator. The level of civil compensation awarded for rights violations corresponded to the severity of the breach and the injury caused.

14. Migrants who faced legal sanctions under the Aliens Act for having failed to regularize their status in the country could lodge an appeal. Judges had the power to order their release, if they had been unjustly detained, and to suspend their expulsion from the country.

15. While the Aliens Act guaranteed the equality of persons with disabilities with others before the law, he believed that it needed to take greater account of migrants with disabilities. A migrant with disabilities entering Peru would have to be accompanied by an able-bodied person, and a problem could arise if that able-bodied person then abandoned

his or her charge. Migrants with disabilities had to be sufficiently capable of fending for themselves. In that context, the Constitutional Court had recognized the validity of certain exceptional forms of interference with the freedom of action of an individual where that individual's limited capacity placed his or her human rights at serious risk.

16. As far as he could remember, the few complaints of discrimination made to the Attorney-General's Office had been shelved owing to lack of evidence, although the problem persisted in certain contexts, such as sporting events. In Peru, discrimination was prohibited under article 323 of the Criminal Code.

17. The Government had taken action to halt gender-related violence against women after the Ombudsman had denounced high levels of domestic violence in Peru, including a number of cases in which the victims had died. That action had been effective, as complaints had fallen from 123 in 2011 to 37 in the first half of 2013. Legal measures had also been introduced to prevent the harassment of women on public transport.

18. **Mr. Vallejo Martell** (Peru) said that the Aliens Act recognized the status of family members of migrant workers and provided for the reunification of families. Its definition of "family" included de facto unions and unmarried children, among other categories. The issue of the unity of the family had to be taken into account when considering the possible expulsion of a migrant worker. Peru had spoken out in support of children's rights and family reunification in a number of international forums, such as high-level meetings between the Community of Latin American and Caribbean States (CELAC) and the European Union.

19. The Government had approved a national plan for education in fundamental rights and duties, under which human rights training would be provided to public servants, including law enforcement officers and the military. The objectives of the plan rested on three main principles: equality and non-discrimination, full exercise of citizenship and a culture of peace. In particular, the plan focused on education regarding protection for the vulnerable and the marginalized and for people who lived in a context of mobility, such as migrant workers. The plan was being implemented, and its results would become evident in the medium to long term.

20. The Ministry of Foreign Affairs used the Internet to disseminate information about the Convention and the rights of migrant workers and their families, as did the Intersectoral Round Table for Migration Management, which had also collaborated with the International Organization for Migration to produce information videos for migrants and potential migrants.

21. The National Commission against Discrimination was developing an anti-discrimination platform to be funded by the Ministry of Justice and Human Rights and administered by the various ministries represented on the Commission. The new body would receive complaints of discrimination and, on the basis of that information, propose changes to the law as needed. It would also follow up on complaints and impose any necessary sanctions. How complaints were dealt with would depend on where the discrimination took place (school, the workplace, public transport, etc.) and its nature (whether it was based on race, gender, sexual orientation, etc.). Serious cases of discrimination were dealt with directly by the Commission.

22. A number of steps had been taken to reduce irregular migration, including the adoption of Act No. 30103, under which migrant workers had 120 days to submit a request to have their status in Peru regularized without having to leave the country and return. The MERCOSUR Residency Agreement Act was a permanent regularization mechanism from which 9,000 foreign nationals in Peru had benefited. The Ministry of Foreign Affairs had concluded agreements concerning the regularization of the status of Peruvian migrants living abroad with a number of countries including Argentina, Chile, Paraguay and

Venezuela. The Ministry had also organized awareness-raising initiatives, such as workshops with migration specialists, and had increased funding for consular offices, extending their opening hours and providing extra training to staff. Under the Aliens Act, a mechanism was to be established to facilitate the integration of migrant workers into Peruvian society.

23. Various measures had been put in place to encourage Peruvian migrants abroad to participate in elections. They included a campaign to remind migrants to register their change of domicile so that they would remain on the electoral register; disseminating information on candidates and the electoral process; setting up polling stations in each circumscription; sending credentials to polling officers by post or e-mail; and training consular officials in offering assistance to voters before and during elections. However, the process of voting from abroad was beset with problems, including the fact that the status of many Peruvian migrants abroad was irregular, which made it difficult for them to cast their vote, particularly if they lived in the United States of America. Other issues included absenteeism, the large geographical distances involved and a lack of funds, which made it difficult to hire staff and cover the costs of the electoral process.

24. Foreign nationals over the age of 18 who had resided in Peru for at least two years could participate, as both voters and candidates, in municipal but not national elections. Foreigners who had taken Peruvian nationality or were naturalized could also participate in regional elections, although they could not stand as candidates in frontier areas.

25. Since 2013, the Ministry of Foreign Affairs and the National Migration Authority had sought to disseminate information about the measures Brazil had in place to facilitate migration, the aim being to encourage Haitians to travel directly to that country without passing through Peru. In 2014, the Peruvian and Brazilian authorities had launched a joint campaign to end abuse of irregular Haitian migrants who, since 2011, had been entering Peru across the country's northern frontier on their way to Brazil. With the participation of the International Organization for Migration, leaflets and posters had been printed in Creole, French and Spanish warning Haitian migrants of the dangers of human trafficking and asking them to report any violations they witnessed or suffered. The same information had also been transmitted over the radio. The numbers of Haitian migrants had reached a peak of over 6,500 in 2011 but had fallen off sharply in 2012 with the introduction of new visa requirements.

26. Supreme Decree No. 020-2012-TR established regulatory norms for private employment agencies that sent migrants to work abroad, thus ensuring increased protection for the latter. The national register of private employment agencies was required to provide job seekers with contact information for Peruvian embassies in destination and transit countries and other relevant information. Employers had to submit employment contracts to the labour authorities. The latter conducted training courses to raise awareness about risks relating to trafficking in persons and forced labour. The majority of Andean frontier workers travelled independently. Under the Andean Labour Migration Instrument, 19 people had been employed as frontier workers and 334 as seasonal workers in the period 2011–2014.

27. **Mr. Chávez Basagoitia** (Peru) said that he wished to draw attention to a particular issue involving migrant workers in Peru: foreign workers were often involved in acts of violence against Peruvian domestic workers. Noting the relevance of the International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189) in that regard, he added that, his previous observation notwithstanding, violence against domestic workers generally had more to do with gender issues and worker-employer power dynamics than with ethnicity.

28. With regard to expulsion figures, it was important to clarify that Peru made no distinction between migrants in general and migrant workers specifically. Indeed, migrant workers were generally protected from expulsion by virtue of their employed status.

29. **Ms. Dicko** requested further information on efforts to protect the rights of Peruvian and foreign frontier workers. She asked whether there were specific measures in place to facilitate the return and integration of Peruvian migrant workers. She enquired how foreign nationals could be employed in the Peruvian civil service.

30. **Mr. Ceriani Cernadas**, acknowledging that Peru was experiencing rapid social and economic change, which in turn was exacerbating some problems relating to migrant workers, said that the Committee would support the State party to the extent possible in its efforts to implement the Convention. While the Committee had received information from civil society organizations and institutions in preparation for the constructive dialogue, he wished to emphasize that States parties should themselves engage in dialogue with civil society prior to reporting.

31. With regard to the holding of migrants, he asked whether holding periods prior to expulsion were always limited to four hours, and he requested more information on holding conditions. He asked whether there were any examples of migrant expulsion rulings and whether appeals had suspensory effect. Would the revised Aliens Act protect the family unit from expulsion, in accordance with the Convention, and were assessments required before rulings on family expulsion were issued?

32. He requested statistics on the detention and holding of Haitian nationals and asked whether the number of Haitians migrating to Peru on an irregular basis had fallen since the introduction of the temporary visa requirement in 2012. Reports indicated that over 600 Haitians with an irregular status had been detained and expelled during the first half of that year. Recalling that migrant workers were protected by the Convention throughout the migration process, even before reaching the country of employment, he said that Haitian nationals in particular faced a very vulnerable employment situation in their country, as well as humanitarian and environmental challenges.

33. He requested more information on the mechanism whereby citizens could report irregular migrants.

34. He asked whether Peru was considering recognizing the competence of the Committee under articles 76 and 77 of the Convention with regard to communications. Lastly, with regard to the Agreement on Residency for Nationals of MERCOSUR Member States and Associated Countries, he asked whether nationals of all associated States had access to residency or whether it was available only to nationals of member States.

35. **Ms. Castellanos Delgado** asked for additional information on any new legislation that restricted the rights of migrants.

36. **Mr. El-Borai** asked whether Peruvian nationals abroad could make social security contributions and whether returning migrant workers were provided with a government pension.

37. **Mr. Brillantes** requested information on measures to protect the right of migrant workers in Peru to freedom of conscience and religion.

38. **Ms. Ladjel** asked whether the improved socioeconomic situation in the country encouraged Peruvian migrant workers to return to Peru, whether it encouraged foreigners to travel to Peru for work and whether it discouraged Peruvian nationals from going abroad to find work. She asked whether Peruvian nationals abroad had access to mechanisms enabling them to express their views and beliefs.

39. **Mr. Taghizadeh**, noting that some of the statistics provided were rather vague, requested more precise figures on the numbers of Peruvians residing abroad who had voted in recent elections. It was vital to obtain detailed information from all available sources in order to ascertain the conditions faced by migrant workers abroad, ensure that the necessary structures were in place to serve those people, and facilitate the Committee's work in protecting their rights.

40. **Mr. Chávez Basagoitia** (Peru) said that the report had been clear and transparent with regard to the protection of migrants in Peru and abroad and that his Government was fully committed to ensuring that protection. While there had been less civil society participation in preparing the report than was usually the case, his Government maintained good relations with civil society.

41. All migrants were provided with the means to defend themselves against complaints concerning them. His delegation would refer to the relevant authorities the issue of whether complaints could be addressed to the Committee in the form of communications.

42. Very few Peruvian migrant workers returned to Peru after retirement, despite measures taken to encourage that practice. Peru had concluded bilateral agreements with countries that received high numbers of Peruvian migrants to ensure full retirement benefits for those people.

43. With the country's socioeconomic situation improving, people were more likely to remain in Peru, and migration out of the country had decreased. However, many Peruvians had become well established in developed countries and were not interested in returning, despite Government efforts to entice them back. On the other hand, partly because of the economic crisis in Europe, the number of highly skilled foreign workers migrating to Peru had increased.

44. The Government promoted mechanisms to foster communication between Peruvian diaspora communities and consulates, which allowed consulates to determine migrants' needs and provide humanitarian and administrative assistance. The electoral roll included 754,000 people living abroad, around half of whom had, with the assistance of their consulates, voted in the second round of the elections.

45. He said that Peru was very open to employing foreign nationals in the public sector and cited the example of a Cuban paramedic who had been employed by the medical service of the Ministry for Foreign Affairs.

46. **Mr. Sivina Hurtado** (Peru), referring to the temporary detention of migrant workers found to be in an irregular situation, said that if the applicable regulations were breached, workers whose rights were violated could take legal action. Further information on relevant legislation could be provided to the Committee in writing.

47. **The Chairperson**, commending the Peruvian delegation for its constructive approach to the dialogue, said that the Committee looked forward to receiving the additional information it had requested.

The meeting rose at 1 p.m.